

Florida Part B 2008 Verification Visit Letter
Enclosure

I. General Supervision System

Critical Element 1: Identification of Noncompliance

Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?

Verification Visit Details and Analysis

The Florida Department of Education (FDE) identifies noncompliance using all components of its general supervision system, including monitoring, dispute resolution, State Performance Report (SPP)/Annual Performance Report (APR) indicators, and informal reviews conducted in response to inquiries by parents and local educational agencies (LEAs). The State's general supervision system is designed to emphasize improved educational outcomes for students with disabilities while continuing to conduct those activities necessary to ensure compliance with Federal laws and regulations and State statutes and rules.

On an annual basis, all 67 LEAs and other entities including the Florida Department of Corrections, the Florida School for the Deaf & Blind and the Developmental Research Laboratory (Lab Schools) are required to complete *The Exceptional Student Education Compliance Self-Assessment*, a web-based self-assessment system. This system contains protocols that FDE uses to determine the level of compliance with Federal and State laws, rules and regulations and SPP indicators. The Exceptional Student Education Compliance Self-Assessment (ESE) facilitates timely identification and correction of noncompliance, both within districts and statewide. An expansion of the web-based system was implemented in the 2008-09 school year. The State reported that this added functionality will provide FDE with access to LEA data related to corrective action and program improvement plans, resulting in an increased ability to discern patterns of noncompliance.

The State uses a dispute resolution data collection system to track timelines and identify noncompliance related to State complaint investigations and due process hearings. FDE also draws upon data from *The FDE Automated Student Information System*, described in Section DS 1 of this report.

Formal findings (i.e., written notification to the district of the standard that was violated and the source(s) used to identify the finding) result from the State's monitoring and oversight activities, such as the ESE Self-Assessment, on-site monitoring visits, State complaint investigations and due process hearings. Findings of noncompliance are issued within three weeks or less from the date of identification. Written notice of noncompliance includes the specific regulatory requirement in question and the data supporting the finding.

Noncompliance identified through informal communications, such as parent calls, is also tracked to ensure that correction occurs. In these situations, the State does not always issue a formal written notification of identified noncompliance to the LEA, but the State always requires and verifies correction.

The State uses its multiple data collection systems to identify noncompliance in a variety of ways, including determining monitoring priorities and identifying key indicators and areas of concern on which to concentrate its resources. For example, the State conducts additional monitoring activities, such as focused on-site monitoring visits, in selected LEAs using current data from various sources, including the APR indicators, the dispute resolution system, the web-based systems, and the LEA's level of timely correction. On-site monitoring activities, therefore, are based upon need rather than on an established cycle.

During the verification visit, OSEP staff reviewed the State's continuum of resources in the State's general supervision system, including a demonstration of the State's data systems. OSEP also reviewed a case study that FDE prepared to illustrate the components of its general supervision system. The case study contained information about various activities relating to identification of noncompliance, including the self-assessment process and the State's procedures and protocols used in this specific case.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. OSEP cannot, however, without collecting data at the local level, determine whether the State's procedures are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 2: Correction of Noncompliance

Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?

Verification Visit Details and Analysis

FDE defines timely correction as correction of noncompliance as soon as possible but in no case longer than one year from identification. Identification begins on the date the State provides the LEA with written notification of the noncompliance. The date of notification begins the timeline upon which the State measures whether or not the correction of noncompliance is timely.

The State requires that all noncompliance be corrected in a timely manner – as soon as possible, but no longer than one year from formal notification of noncompliance. FDE developed specific strategies and criteria for correcting noncompliance, including correction of individualized education programs (IEPs), insufficiencies, and systemic

noncompliance. For example, for noncompliance identified in a given student's IEP that can be corrected, LEAs are expected to correct the noncompliance for the student in question within 60 days. If the noncompliance occurs in over 25% of records or cases reviewed, the State considers the noncompliance to be systemic and the LEA must demonstrate systemic correction within one year through the development and implementation of a corrective action plan, in addition to the immediate correction for each individual student. For noncompliance identified through dispute resolution, correction is required based upon a date certain stated in the findings, generally within 30 days and always within one year. For noncompliance identified through data collection processes associated with the SPP/APR, LEAs must correct the noncompliance no longer than one year from formal notification of noncompliance on an SPP/APR indicator.

FDE has a range of enforcement options and sanctions available, as authorized under State law, including additional monitoring activities, adjustments to State or Federal funds and compensatory services. The State reported that LEAs generally address identified noncompliance in a timely manner. The State has often provided additional technical assistance, training, and resources to assist LEAs in correcting the noncompliance; however, when needed, enforcement actions and sanctions are imposed.

With respect to the adjustment of Part B funds, the State reported that in some instances where an LEA was unable to correct noncompliance with a requirement of Part B because the noncompliance involved a time line or other matter such as the failure to provide prior written notice before taking action, the State adjusted the LEA's Part B funds by reducing its allocation to that LEA. The State further reported that it did not provide reasonable notice and an opportunity for a hearing to the LEA prior to taking such action.

During the verification visit, FDE demonstrated timely correction using the case studies from several of the State's general supervision components, including activities relating to monitoring and dispute resolution (State Complaint Early Resolution Case Study, Due Process Case Study and Mediation Case Study). OSEP staff also reviewed the range of options the State uses to enforce correction of noncompliance, including Funds Adjustment letters and examples of compensatory services required. In addition, FDE provided examples of variances in corrective actions that the State required for LEAs with small or medium student enrollment and for LEAs with large student enrollment.

FDE uses data from its dispute resolution system to inform its monitoring system as a method for ensuring correction of noncompliance. While on-site, the State demonstrated how its dispute resolution systems are integrated into FDE's general supervision system for identifying and correcting noncompliance. The State maintains an internal tracking system to ensure implementation of the corrective actions for components of the State's dispute resolution system.

FDE identified several challenges that impact the State's ability to correct noncompliance in a timely manner. For example, in some cases, FDE staff may not always have easy access to information from the disparate components of the State's general supervision

system (e.g., dispute resolution, monitoring, SPP/APR indicator teams, ESE Self-Assessment). Additionally, FDE stated that when an underlying root cause of noncompliance is related to systemic issues, such as limited resources or long standing procedures that require significant change, correction to a level of 100% of noncompliance within one year is difficult to attain. A third challenge (discussed further in Sections GS 4 and Local Focused Monitoring) included interagency collaboration to correct noncompliance of timely transition from Part C (Florida Department of Health) to Part B (Department of Education) programs under IDEA.

The State identified each of the previous challenges reported in its APR and developed specific strategies and improvement activities. Each year as part of the development of the APR, the State reviews the strategies to ensure that the anticipated outcomes of the improvement activities are met. In those circumstances where the outcomes are not met, the State revises the APR and the SPP accordingly.

FDE reported that as a result of implementing the improvement activities, its rate of timely correction of noncompliance is improving. The State's FFY 2006 reported data for this indicator was 84%. Those data represent slippage from the FFY 2005 data of 90%. However, the State provided updated data following OSEP's on-site visit that demonstrated correction of all noncompliance identified in FFY 2004-2005 and FFY 2005-2006. For noncompliance identified in 2006-2007, the State reported that it anticipates a timely correction rate of over 95%.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has made improvements to its general supervision system so that the State will be able to ensure correction of identified noncompliance in a timely manner using its different components. OSEP cannot, however, without collecting data at the local level, determine whether the State's procedures are fully effective in correcting noncompliance in a timely manner. OSEP will respond at a later date to the State's data on timely correction of noncompliance reported in its FFY 2007 APR submitted in February 2009.

With respect to the State's adjustment of Part B funds to an LEA, if the SEA finds that an LEA or State agency is failing to comply with any requirement described in 34 CFR §§300.201 through 300.213, the SEA may not reduce the amount of Part B funds provided to the LEA or State agency unless the SEA has provided reasonable notice and an opportunity for a hearing to the LEA or State agency, pursuant to 34 CFR §300.322.

Required Actions/Next Steps

FDE must provide to OSEP within 60 days of the date of this letter a written assurance that the State is in compliance with the requirements of 34 CFR §300.222.

Critical Element 3: Dispute Resolution

Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?

Verification Visit Details and Analysis

OSEP staff reviewed multiple examples of the processes the State uses to implement the dispute resolution requirements of IDEA. OSEP staff reviewed both complaint and due process hearing logs that FDE maintains as well as the preliminary data for the FFY 2007 APR that was due February 2, 2009. The State provided case studies and other documentation, including the State's dispute resolution tracking system relating to Complaint Orders, Due Process Hearing Orders, Resolution Sessions and Mediation, and used the specific case studies as evidence. Each case study illustrated the particular dispute resolution component, such as due process, complaints and mediation, from initiation to conclusion. OSEP determined that the timelines reflected on Florida's logs were consistent with the dates on the particular Orders reviewed for due process hearings and complaints.

The Division of Administrative Hearings (DOAH) administers due process hearings. DOAH is an agency of the Florida Cabinet that selects the Chief Judge who in turn selects the Administrative Law Judge who presides over the hearing. FDE staff closely monitors active due process hearing cases to ensure that Administrative Law Judges are complying with the 45-day time line or documenting the reasons that specific extensions of time are granted at the request of either party. OSEP staff also reviewed samples of follow-up letters that FDE sent to LEAs with due process hearing cases in which the parent prevailed. These LEAs were required to submit documentation verifying the implementation of the due process hearing decisions. OSEP staff reviewed examples of documentation subsequently submitted by LEAs.

Florida's FFY 2006 grant was issued with Special Conditions related to the timeliness of due process hearing decisions. By letter dated June 15, 2007, OSEP notified the State, based on the State's final progress report dated June 1, 2007, that the State had satisfied those Special Conditions. The State has maintained a high level (100%) of compliance in meeting the required 45-day timeline or a properly extended timeline since the Special Conditions imposed on the State's FFY 2006 grant award were removed in June 2007.

OSEP notes the continued success of the State's mediation process. Historically, FDE has used mediation as a successful process for conflict resolution. FDE adopted a mediation process and required its use prior to the Federal mandate in the 1997 reauthorization of the Individuals With Disabilities Education Act (IDEA).

Due Process Hearing Decision Appeals

In 2004, OSEP informed Florida that its laws were not consistent with the requirement in the IDEA (now section 615(i)(2)(C)(ii)) that appeals of due process hearing decisions be heard in a court that receives additional evidence. Specifically, State law permits appeals to the State District Court of Appeals, which does not hear additional evidence. FDE has received a conditional grant award each year since this noncompliance was identified. OSEP reviewed this issue with FDE during the verification visit. For each of the five due process hearings that were appealed between July 1, 2006 and June 30, 2008, FDE provided the following information: 1) the name of the court to which the case was appealed; and 2) the Appellant/Petitioner. Two cases were appealed to the State District

Court of Appeals; and three cases were appealed to the U.S. District Court. Of the two cases appealed to the State District Court of Appeals, one was appealed by an LEA and the other by a parent.

In correspondence to OSEP dated July 19, 2008, FDE outlined the steps it plans to take to bring the State into compliance with IDEA. FDE reported to OSEP during the verification visit that plans were proceeding according to the proposed steps in the July 2008 letter referenced above. Specifically, FDE explained that, in August 2008, FDE forwarded to the State Legislature language resolving this issue. FDE anticipates that the State Legislature will approve the new language in March 2009 and will forward the amendment to the Governor for signature by June 2009.

OSEP Conclusions

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must ensure that it complies with section 615(i)(2)(C)(ii) of IDEA regarding the appeals of due process hearing decisions. The State provided documentation and information that it has forwarded to the State Legislature language for dispute resolution requirements that would resolve this issue. In addition, as part of its general supervision responsibilities, the State must ensure that LEAs, and other relevant public agencies as defined by 34 CFR §300.33, do not appeal due process hearings to the State District Court of Appeals pending a change in the State's statute that permits such appeals. OSEP finds that the State has not taken any steps to ensure that LEAs and other relevant public agencies do not appeal due process hearings to the State District Court of Appeals. For these reasons, the State remains out of compliance with the requirements of section 615(i)(2)(C)(ii) of IDEA.

Required Actions/Next Steps

As referenced in OSEP's June 2008 response to the State's FFY 2006 APR, the State must address the statutory scheme for appeals of due process hearing decisions consistent with section 615(i)(2)(C)(ii). FDE must provide to OSEP within 60 days of the date of this letter: (1) information on the status of the specific actions outlined in FDE's July 19, 2008 correspondence to OSEP; and (2) a copy of a memorandum or other written or electronic notice sent to all LEAs, and other relevant public agencies as defined by 34 CFR §300.33, directing them not to appeal due process hearings to courts that do not hear additional evidence, such as the State District Court of Appeals. OSEP will consider this information when making a determination for the State under IDEA section 616(d) and when awarding the State's FFY 09 Grant.

Critical Element 4: Improving Educational Results

Does the State have procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities?

During interviews with FDE staff, FDE described the State's procedures that direct Part B discretionary funds and other State funds to the State's highest priorities. These priorities are based on needs identified in the APR and recommendations from

stakeholders. These funds, along with technical assistance provided by FDE staff, and collaborative efforts with State agencies and other stakeholders, as well as various national initiatives, form the foundation for improving performance for children with disabilities statewide. FDE staff reviewed numerous documents with OSEP during the verification visit, including technical assistance papers, sample LEA Action Plans, and case studies that FDE prepared to demonstrate how these collaborative efforts function to address the specific needs of LEAs and to achieve statewide goals.

FDE developed internal methods to further its efforts to improve educational results. FDE combined SPP/APR teams for graduation (APR Indicator B-1), dropout (APR Indicator B-2), secondary transition (APR Indicator B-13) and post-school outcomes (APR Indicator B-14) for students with disabilities. The teams support coordinated activities directed to LEAs through systems change efforts, targeted planning, training and technical assistance, funding of discretionary projects through Part B funds, and other collaborative efforts. It appears that the implementation of these improvement strategies is having a positive impact on improving educational results, particularly for Indicator 1.

FDE supports the creation of meaningful inclusion of children with disabilities in the least restrictive environment (LRE) primarily through two Part B discretionary projects, Florida Inclusion Network and the Florida Diagnostic and Learning Resources Systems. These projects provide an array of instructional support services, professional development and technical assistance to LEAs across the State.

In order to address the needs of preschool-aged children with disabilities, FDE established a team of FDE staff and discretionary project personnel to assist LEAs in improving performance in areas related to preschool LRE and early childhood transition (APR Indicators B-6-preschool LRE and early childhood transition Indicator B-12). The Technical Assistance and Training System (TATS) project provides training to LEAs and other early childhood partners. FDE staff also issued written guidance, such as technical assistance papers, to assist LEAs in this effort. In addition, a workgroup was initiated with participation from State agencies, parents and national technical assistance providers who collaborate to improve and increase opportunities for inclusion for the State's preschool population.

In December 2005, FDE and the Florida Department of Health, Children's Medical Services, Early Steps signed an interagency agreement for the purpose of defining and clarifying the responsibilities of each agency to ensure the statewide provision of coordinated quality early intervention services, including transition and family-centered services in natural environments for children with disabilities from birth to three years of age and their families. FDE is also collaborating with the Department of Health to establish a birth to five system to measure child outcomes for young children with disabilities. All communications relating to the birth to five system are developed collaboratively, including materials and other support documents and a web-based reporting system. Implementation of this system will be phased in over time with select cadres of LEAs and the corresponding local Early Steps. Additional information about

implementation of early childhood transition activities is described in the final section of this Report.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

Required Actions/Next Steps

No action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS and assessment)?

Verification Visit Details and Analysis

Public Reporting and Determinations

As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §§300.600(a) and 300.602, each State must: (1) annually report to the public on the performance of each LEA against the State's SPP targets; and (2) make an annual determination for each LEA. The State meets the reporting requirement by publishing a district profile for each LEA on the SEA's website, in which the State reports the LEA's performance against targets in the State's SPP. Printed copies of the profile are also provided to each school superintendent, exceptional student education administrator, school services director and State Advisory Committee member.

OSEP reviewed the State's process and verified that local determinations were not consistent with sections 616(a) and (e) of IDEA. At a minimum, the State's annual determination process must include consideration of the following factors: an LEA's performance on all SPP compliance indicators, whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source. OSEP confirmed that the State's determination procedures were not consistent with the FAQs dated 10/19/2006 and 12/4/2007 and OSEP Guidance on Determinations of the Status of Local Programs by State Agencies under Parts B and C of IDEA dated March 7, 2007.

With respect to LEA determinations for the 2006-2007 school year, the State reported that it made LEA determinations based on LEA audit findings, LEA data from Indicators 9, 10, 11, 12, and 15, whether the LEA has valid and reliable data, and whether there was any uncorrected noncompliance from 2005-2006. The State reported that it did not consider data from Indicator 13 because, at that time, the State had data on Indicator 13 from only 11 LEAs. In addition, as required, the State made determinations annually about the performance of each LEA using the categories in 34 CFR §300.603(b)(1) -- meets requirements, needs assistance, needs intervention, and needs substantial intervention. The State notifies LEAs about determinations in the summer following submission of the APR and, depending upon the LEA's level of determination, advises

the LEAs of available sources of technical assistance in accordance with the enforcement provisions in 34 CFR §300.604.

Private Schools

The State has 1269 registered nonprofit private schools. FDE monitors to ensure that LEAs are spending a proportionate amount of Federal Part B funds on providing special education and related services for parentally placed private school children with disabilities in accordance with 34 CFR §300.133(a). LEAs are required to sign an assurance regarding equitable services to parentally-placed private school students with disabilities in the LEA application for IDEA funds. Each LEA is also required to outline in its LEA application the process used for timely and meaningful consultation. As part of its general supervision activities, FDE staff conducts periodic reviews of data from parent or LEA requests for assistance, mediation, due process hearings and State complaint investigations relating to parentally-placed private school students with disabilities.

The ESE Compliance Self-Assessment, described in GS 1, includes a review of a sampling of services plans for parentally-placed private school children with disabilities to ensure that these services plans are developed and used appropriately to meet the Part B requirements.

Significant Disproportionality and Coordinated Early Intervening Services (CEIS)

As required under IDEA, in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, the State: (1) provides for the review and if appropriate revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of IDEA; (2) requires any LEA identified to reserve fifteen percent of funds under section 613(f) to provide comprehensive, CEIS to serve children in the local education agency, particularly children in those groups that were significantly over identified; and (3) requires the LEA to publicly report on the revision of policies, practices, and procedures related to disproportionality.

The State identified eleven LEAs with significant disproportionality in School Year 2008-09. In addition to the eleven LEAs identified by the State, 22 LEAs voluntarily chose to use IDEA funds for CEIS. All 33 LEAs provided a description in their applications for Part B funds of how the funds for CEIS were to be used. FDE reported that it has begun a review of the LEAs to ensure that they are using the funds as described in their applications. The State also intends to review a summary report that each LEA submits at the close of the year that provides line item reporting of expenditures. During the visit, FDE staff described plans to draft policies and procedure for CEIS based on guidance that OSEP issued in August 2008. Finally, the State of Florida, Auditor General (Auditor General) audits the use of Part B funds by the State and by the LEAs.

NIMAS

The State adopted the National Instructional Materials Accessibility Standard (NIMAS) and coordinates with the National Instructional Materials Access Center (NIMAC) in accordance with 34 CFR §300.172. Each LEA must submit an assurance in the LEA application for IDEA funds indicating its intent to comply with NIMAS requirements.

The Florida Instructional Materials Center for the Visually Impaired (FIMC-VI) is designated as Florida's Authorized User. LEAs appoint digital rights managers to coordinate with FIMC-VI on various activities, including registering students, ordering materials and ensuring that materials are used appropriately. FDE provides ongoing technical assistance and is developing written guidance regarding the appropriate procedures for procuring NIMAS-sourced material and the appropriate use of these materials.

Assessments

Florida Statutes require that all Florida students enrolled in grades 3 through 11 participate in the statewide assessment program. Through the compliance monitoring process included in the ESE Self-Assessment discussed in section GS 1, the State reported that it closely monitors to ensure that LEAs comply with the Part B requirements for statewide and districtwide assessments in accordance with 34 CFR §300.160. The IEP Team decides which State assessments a student will take and what accommodations are appropriate. Typically, assessments at LEA levels are used for diagnostic and instructional purposes. In the event a district administers a districtwide assessment, IEP teams determine whether the student should be administered an alternate assessment. The decision is documented on the IEP and monitored through the compliance monitoring process. Information (including data required by IDEA for public reporting purposes) about statewide assessments and alternate assessment are located on the State's website.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that, with the exception of LEA determinations discussed below, the State has procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS and assessment). OSEP cannot, however, without also collecting data at the State and local levels, determine whether these procedures and practices are sufficient to ensure that LEAs in the State effectively implement these selected grant assurances.

OSEP finds that when making annual determinations on the performance of its LEAs, the State did not consider all of the required factors. The State is required to make determinations using data for all compliance indicators for each LEA -- if the State is collecting data for one or more compliance indicators through State monitoring or sampling, the State must consider the data collected for that LEA when making annual determinations. The State had monitoring data for compliance Indicator 13 for 11 LEAs for 2006–2007. Accordingly, the annual determination for those LEAs should have considered data from Indicator 13 for those LEAs.

Required Actions/Next Steps

Within 60 days of the date of this letter, the State must provide documentation that, consistent with section 616(a) and section 616(e) of IDEA, its procedures for making future annual determinations on the performance of its LEAs includes consideration of an LEA's performance on all SPP compliance indicators.

II. Data Systems

Critical Element 1: Valid and Reliable Data: *Collecting and Reporting Valid and Reliable Data*

Does the State have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner?

Verification Visit Details and Analysis

FDE's data systems are internal to the department and do not require the subcontracting of data with outside vendors. The foundation of Florida's data systems is the Florida Automated Student Information System. This is a comprehensive system that includes various features designed to ensure that LEAs and schools report reliable data in a timely manner. Included are element definitions, formal requirements, edit checks for identifying data anomalies, edits for ensuring accurate data, and appendices that provide special coding. This system has elements to assist both LEA level personnel and school-based personnel in reporting reliable data. FDE staff monitors the data for accuracy and provides technical assistance when needed. The Office of Education, Information and Accountability Services performs detailed data checks prior to allocating State funding to subrecipients.

In addition to the FDE Automated Student Information System, the State uses the Florida Automated System for Transferring Education Records (FASTER) to transfer student records electronically between schools. FDE explained that this system has been helpful in expediting the enrollment of migrant and homeless students with disabilities.

For section 616 information, FDE verifies the data with samples of LEA records entered in the ESE Self-Assessment Database. OSEP staff reviewed the *Exceptional Student Education Compliance Self-Assessment Processes and Procedures Manual* (Manual), a document that describes the State's data verification activities. The Manual requires that LEAs must provide each student's data information accurately and on time. As an incentive for LEAs to provide data in a timely manner, the Manual provides that State funding is withheld until the LEA meets State requirements.

Data Verification Based on OSEP's Analysis of FDE's FFY 2006 APRs

During the verification visit, OSEP and FDE reviewed the Florida Part B FFY 2006 SPP/APR Response Table dated June 6, 2008, regarding the APR Indicator B10. The State's FFY 2006 reported data were not valid or reliable because the State did not provide a percent of LEAs with disproportionate representation of racial and ethnic groups in specific disability categories that were the result of inappropriate identification,

that FDE must review its improvement activities and revise, if appropriate, to ensure that the activities will enable the State to demonstrate in the FFY 2007 APR, due February 2, 2009, that it has examined all LEAs in which the State identified disproportionate representation of racial and ethnic groups in specific disability categories and determined whether the disproportionate representation of racial and ethnic groups is a result of inappropriate identification. The State was required to make determinations for FFYs 2005, 2006 and 2007 and report the results of those determinations in the FFY 2007 APR. Further, if the State identified any LEAs as having disproportionate representation of racial or ethnic groups in special education and related services that were the result of inappropriate identification based on data for FFYs 2005 and 2006, the State must describe in the FFY 2007 APR its determinations of whether the LEAs identified are in compliance with the requirements of 34 CFR §§300.111, 300.201 and 300.301 through 300.311.

The State reported that it has examined the process used to report the data required for Indicator B-10 and has revised its procedures and improvement activities for this indicator to address the information required by OSEP in the Response Table. OSEP will address this issue in its response to the State's FFY 2007 APR.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, subject to any issues that may arise related to Indicator B-10 in the State's FFY 2007 APR, OSEP believes that the State has a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner. OSEP cannot, however, without also conducting a review of data collection and reporting practices at the local level, determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that is consistent with Part B.

Required Actions/Next Steps

No action is required.

Critical Element 2: *Data Reflect Actual Practice and Performance*

Does the State have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance?

Verification Visit Details and Analysis

The State reported that FDE's Office of Education, Information and Accountability Services staff and the FDE-Exceptional Student Education staff work closely together to ensure that data collected through FDE's Automated Student Information System are valid, reliable and reflect actual practice. Data collection procedures are examined regularly. Each year the Office of Education, Information and Accountability Services staff and the ESE staff work with all LEAs to revise edit checks and create new edit checks to assist in the accurate reporting of data. For example, the State clarifies element definitions, writes and updates technical assistance papers, and shares with LEAs all revisions at statewide workshops held throughout the year.

To ensure accurate reporting of SPP/APR data, LEAs are asked to conduct verification activities. For example, LEAs must review and verify early childhood transition (Indicator B12) data tracking children with disabilities from IDEA Part C to Part B programs before the State will accept the data as valid and reliable. Additionally, FDE's Office of Education, Information and Accountability Services provides assistance to ESE by validating data used in the State's web-based LEA general supervision plan.

OSEP also reviewed the *Florida Calculation Guide for the Florida FFYs 2007, 2008 and 2009 APRs*. The Guide, based on OSEP's written guidance for SPP/APR submissions, is designed to provide LEAs with information about the sources of local data used for the purpose of providing valid and reliable data for the State's SPP and APR. The Guide addresses APR Indicators B1-15 and B-20 and provides accurate and useful information to LEAs.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance. OSEP cannot, however, without conducting a review of data collection and reporting policies at the local level, determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that reflects actual practice and performance.

Required Actions/Next Steps

No action is required.

Critical Element 3: Integrating Data Across Systems to Improve Compliance and Results

Does the State compile and integrate data across systems and use the data to inform and focus its improvement activities?

Verification Visit Details and Analysis

FDE's Office of Education, Information and Accountability Services staff and ESE staff presented an overview of the electronic data collection and reporting systems. The State uses data across its data systems to establish priorities for discretionary activities, including program improvement activities at the State and local levels as described in the State's APR. The State uses data found in the web-based LEA general supervision plan (referenced above) to develop corrective action plans, to identify program improvement activities, and to ensure correction of identified noncompliance in a timely manner. The State also uses data to track the outcome of the improvement activities in the LEA improvement plan and to revise State targets in the SPP, as appropriate. For example, FDE demonstrated how the State, LEA staff and the Florida Inclusion Network (FIN) work together to ensure that children with disabilities are placed in the least restrictive settings.

FDE staff provided a flow chart to describe the manner in which the State compiles and integrates data across all systems and also how the data is used to improve performance and compliance. The chart presented a comprehensive overview of data sources, evaluation and improvement processes in the State.

In addition, the State demonstrated how the Florida Automated Student Information System serves as a resource for longitudinal studies. The results of these studies yield data useful to the Commissioner in decision-making and setting priorities. For example, the K-20 database recently generated predictors to assist the State in preventing students with disabilities from leaving school before graduation.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State compiles and integrates data across systems and uses the data to inform and focus its improvement activities.

Required Action/Next Steps

No action is required.

III. Fiscal System

Critical Element 1: *Timely Obligation and Liquidation of Funds*

Does the State have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

FDE staff identified the three organizational elements that comprise the FDE Management Team for Federal Programs- ESE staff, the Comptroller's Office, and the Office of Grants Management. Each of these offices has a critical role in implementing procedures for ensuring the timely obligation and distribution of IDEA funds.

FDE awards Part B funds to subrecipients pursuant to the procedures outlined in the *Project Application and Amendment Procedures for Federal and State Programs* (referred to by FDE personnel as the Green Book). As projects are awarded they are obligated in the Statewide Accounting System. Each award contains specific timelines when obligations are to be liquidated and final disbursement reports are due. These timelines are determined based on the period of availability of the funds. FDE also has timelines for drawing down and expending IDEA grant award funds. The Comptroller's Office monitors these activities to ensure that timelines are met for obligation and liquidation.

FDE fiscal staff demonstrated the State's fiscal database system, including the automatic tracking procedures designed to ensure that the State obligates and liquidates funding in a timely manner. OSEP reviewed *Florida Evidence of State Single Audits conducted as required in A-133*, a document that describes the State's correction of audit findings and the State policies and procedures related to obligation and liquidation of funds. Florida follows specific administrative procedures outlined in the *Project Application and*

Amendment Procedures for Federal and State Programs to ensure the timely obligation and liquidation of funds. For example, final expenditure reports are filed by each subrecipient within 50 days of the end of the award period. The State monitors final expenditure reports and completes liquidation procedures within 90 days of the end of the funding period.

OSEP staff reviewed local project applications, project award notifications, and selected discretionary project applications. These reviews served as examples of how the State ensures the timely obligation and liquidation of funds from the beginning of the grant process (when the State announces the availability of funds) to the end of the project when the subrecipients file final fiscal reports. OSEP's internal fiscal management procedures indicated that the State has consistently obligated and liquidated IDEA funds in a timely manner.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures to ensure the timely obligation and liquidation of IDEA funds.

Required Actions/Next steps

No action is required.

Critical Element 2: *Appropriate Distribution of IDEA Funds*

Does the State have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State?

Fiscal staff from the State Office of Grants Management and the Comptroller's Office reviewed FDE's methods for calculating the appropriate distribution of IDEA funds to subrecipients. State fiscal personnel determine sub-grant allocations, including the base amount, population and poverty criteria. The State provided examples of its procedures for meeting Federal requirements when distributing IDEA funds to LEAs and other State agencies. FDE fiscal staff outlined specific procedures with explanations to demonstrate that FDE ensures appropriate distribution of IDEA funds (both formula and discretionary funded projects) as outlined in the State's grant award application submitted to OSEP in FFYs 2007 and 2008. An LEA's eligibility is determined based on: 1) submission of child count data; and 2) approval of *Special Programs and Procedures*, the local application for IDEA funds that documents compliance with State and Federal regulations. Each grant and its set-asides have a unique identifier (a five-character code) established within a unique field in the Statewide Accounting System (FLAIR).

All charter schools in Florida are considered public schools within the LEA where a given charter school is located. In 2007-08 FDE had 376 charter schools. FDE staff provides charter school and school district staff with extensive training, technical assistance, and information regarding IDEA fiscal requirements. If a charter school

believes that it is not receiving the proper allocation of Part B funds for its students with disabilities, the school is encouraged to contact FDE staff for assistance. FDE provided written materials to demonstrate the process used to ensure appropriate distribution of IDEA funds to LEAs with charter schools.

LEAs assure compliance with IDEA requirements in their local applications for IDEA funding. The requirements include the provision of services and the expenditure for the proportionate share set-aside for parentally-placed private school children. In addition, LEAs are required to provide an explanation of the consultation with nonpublic schools and identify the counts for calculating the proportionate share for Part B (Section 611) and Part B, Preschool funds (Section 619). Compliance is monitored regularly by the Office of Auditor General to ensure funds are appropriately allocated. FDE provided examples of how the Auditor General monitors assurances in LEA applications with regard to the required expenditure of proportionate share for parentally-placed private school children.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures to ensure appropriate distribution of IDEA funds.

Required Actions/Next Steps

No action is required.

Critical Element 3: Appropriate Use of IDEA Funds

Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds?

FDE described its procedures to ensure compliance with fiscal maintenance of efforts, CEIS, excess costs, significant disproportionality and other related fiscal requirements. The State provided OSEP with an in-depth overview of the *Financial and Program Cost Accounting and Reporting for Florida Schools* (referred to by FDE as the Red Book) and an overview of the *Florida Maintenance of Effort Procedures*. Using data from the LEA fiscal reports and other relevant sources, the Office of Funding and Financial Reporting prepares a worksheet comparing prior year expenditures for children with disabilities with the current year statewide expenditures for children with disabilities. The State Office of Funding and Financial Reporting reviews, edits, and completes all district fiscal expenditure reports.

The State reported that it monitors LEAs for compliance with supplement and nonsupplant requirements. First, the State reviews annual project applications. Staff from the ESE office and the Office of Grants management conducts this review. The staff looks at potential supplanting in the proposed budget. If a proposed expenditure in the budget indicates a potential supplanting violation, staff work with the subrecipient to

make appropriate revisions. Second, the Auditor General identifies, through the A-133 audit reports, supplanting violations. Third, ESE staff provides technical assistance to subrecipients regarding the requirement to use Federal funds to supplement, not supplant, other State and local funds.

LEAs are required to identify in their annual application for funds any amount of funds set aside for purposes of CEIS. The set-aside amount is verified for accuracy during the review process of applications. Each LEA is required to sign a set of *General Assurances for Participation in State and Federal Programs*, including an assurance that "The control of funds provided to the recipient under each program and title to property acquired with those funds will be in a public agency and a public agency will administer those funds and property." Additionally, training and technical assistance are provided to LEAs addressing this issues. The Auditor General conducts regular fiscal monitoring of LEAs to ensure compliance with Federal regulations.

The Auditor General conducts most single audits and posts all audit reports on its website. This information is used to prepare for future monitoring visits; provide technical assistance; and determine a subrecipient's "risk assessment." FDE uses these audit findings, including Federal single audits, for LEA determinations.

OSEP reviewed training agendas provided to local program and fiscal staff, subrecipient A-133 audit reports and annual project applications (including assurances) as well as other general information about how IDEA fiscal requirements are met. FDE has not identified any barriers impeding the ability to exercise fiscal control.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State has procedures that are reasonable designed to ensure appropriate use of IDEA funds. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure appropriate use of IDEA funds.

Required Actions/Next Steps

No action is required.

IV. Focused Monitoring Component of the Verification Visit: Early Childhood Transition

Background

OSEP selected early childhood transition as an area of concern for focused monitoring in Florida. The State's APR data for Indicator B-12 showed that in FFY 2005, the percentage of children referred by Part C prior to age 3 and who are found eligible for Part B who have an IEP developed and implemented by their 3rd birthday was 32% and in FFY 2006, 68%. (See also Section GS 4 for a discussion of statewide early childhood transition). Indicator B-12 requires data that reflects compliance with 34 CFR

§300.124(b). In addition, OSEP monitored the State's compliance with 34 CFR §300.124 (a) and (c).

OSEP visited three of 67 LEAs and three of 10 Part C regions. Each LEA was in one of the three Part C regions. Two OSEP staff (one from Part C and one from Part B) conducted joint interviews with local Part B and Part C staff at each of the three sites. Part C interviewees included the Early Steps director, family services supervisor, the Child Find coordinator and a family services provider. Local Part B interviewees included the Pre-K director and the staffing specialist. State Part B and State Part C staff attended the interviews as observers.

At each of the sites OSEP staff reviewed the local interagency agreement, Individualized Family Services Plans (IFSPs) and IEPs of children who entered Part C and transitioned to Part B, LEA early childhood transition policies, family resource documents, training schedules, and child tracking systems. In addition, staff from Part C clarified the components of notification (including the impact of the State's opt-out policy); the timelines of transition conferences (demonstrating that the conferences were held 90 days prior to the child's third birthday); and an example of an IEP developed and implemented by the child's third birthday. The local staff also described the process for referrals from Part C to Part B, including providing written prior notice and procedural safeguards to parents.

Focused Monitoring Visit Details and Analysis

FDE is collaborating with the lead agency for the Part C program, the Florida Department of Health, to establish a birth to five system to measure child outcomes for young children with disabilities and to improve transition from Part C to Part B. FDE has elected to phase in the implementation of this pilot project over time with a selected cadre of school districts and the corresponding local Early Steps program. At the time of the verification visit the initial phases were being implemented and the State planned to implement the final phase by March 2009.

State Part B and Part C staff provided to OSEP the State's monitoring rating (Successful, Minimal Progress or Moderate Progress) for early childhood transition for each LEA and Part C region in the State. Based on that information, OSEP visited the following sites:

- North Central/Gainesville-C and Marion LEA -B (Pairing Part C Minimal Progress with Part B Successful)
- North Beaches/(Daytona Area-C /Flagler LEA-B (Pairing Part C Successful with Part B Minimal Progress)
- Big Bend Tallahassee-C/Leon LEA- B (Pairing Part C Moderate progress/Improving with same for Part B)

Florida Part B 2008 Verification Visit Letter - Enclosure

For the purposes of the Part B verification visit, OSEP reviewed 10 IEPs and 10 IFSPs at each site, for a total of 30 records. The IEP/IFSP Selection Criteria included the following for children who have transitioned from Part C to Part B:

- At each site, five of the records were children who turned three during the 2006-2007 school year, and five were children who turned three during the 2007-2008 school year (for a total of 10 records per site).
- For each child, OSEP reviewed the child's record, including at least the child's IFSP, parent notices, the letter from Part C inviting Part B to attend the 90-day transition meeting, and the child's IEP, as well as any other documentation to better understand the process involved in transitioning the child from Part C to Part B.
- Of the five records for each program year at each site, three children were randomly selected by the LEA and the Part C program, and one migrant child and one homeless child were selected. If records for a migrant child or homeless child were unavailable, then randomly selected children were provided so that OSEP reviewed a total of five children's records for each school year at each site.

For each of the three LEAs visited, OSEP reviewed the: (a) local policies, procedures and practices for early childhood transition; (b) results of FFY 2005-2007 complaint investigations and due process hearing decisions related to early childhood transition; (c) data submitted by the LEA to FDE to document timely early childhood transition conferences; (d) a calendar, if available, of any locally sponsored professional development activities to promote effective early childhood transition (for parents and staff); and (e) interagency agreements, memoranda of understanding, and guidance between Parts C and B.

The Florida Early Steps Regional Programs and LEAs throughout the State are phasing in the use of the Batelle, an early childhood assessment tool. Part B and Part C interviewees stated that Florida met the early childhood transition requirements for timely evaluations in those areas of the State where the Batelle was used in both Part C and Part B programs because the use of the same evaluation tool by both systems avoided delays in evaluation. Two of the three local sites that OSEP visited used the Batelle in both Part B and Part C. In the LEA not currently using the Batelle, the special education staff explained that the LEA will be using the Batelle and accepting the Part C assessment in 2009. At the State level, FDE reported that because an increased number of LEAs and Early Steps Regions used the Batelle in 2008, the State anticipates a higher compliance rate for the FFY 2007 APR Indicator B-12, that was due February 2, 2009. All three LEAs shared that the improvements in the early childhood transition process were possible because of the use of the Batelle, and increased collaboration, communication, cooperative scheduling, and a comprehensive tracking system. In addition, as referenced in section GS 4 of this document, TATS has provided training and technical assistance to LEAs throughout the State. This statewide initiative has assisted LEAs in their efforts to meet the early children transition requirements of 34 CFR §300.124.

With respect to the requirements of 34 CFR §300.124(a), OSEP reviewed the State's policies and procedures regarding early childhood transition -- Transition from Early Steps to the School District Prekindergarten Program for Children with Disabilities or Other Programs -- and determined that the documents met the requirements of 34 CFR §300.124(a).¹ With respect to 34 CFR §300.124(c), OSEP found that an LEA was always present at the transition conference unless the parent did not provide consent.

OSEP Review of Records

As indicated above, OSEP reviewed 30 child records to determine whether the requirements of 34 CFR §300.124(b) were being met. OSEP found that 28 out of 30, IEPs were developed by the child's 3rd birthday. Of the two IEPs that were not developed by the child's 3rd birthday, one was late with no reason specified and one was late due to a misunderstanding by a related service provider of the Part B requirements.

OSEP also found that 28 out of 30 IEPs were either implemented by the child's 3rd birthday as required by 34 CFR §300.124(b), or not implemented by the child's 3rd birthday, but with a valid reason. For example, one IEP was developed at the end of the school year and not implemented until the fall because the IEP did not require that special education and related services be provided during the summer. In another case, the parent refused to provide consent for services by the child's 3rd birthday. Two IEPs were not implemented by the child's 3rd birthday without a valid reason.

OSEP Conclusion

Based on the results of the interviews and the materials reviewed at three sites, and OSEP's review of other materials and conversations with State and local staff, OSEP concludes that FDE is in compliance with the requirements of 34 CFR §300.124(a) and (c). With respect to 34 CFR §300.124(b), FDE is making progress towards reaching full compliance, and OSEP will address this issue when responding to the State's FFY 2007 APR.

¹ OSEP is sending a separate letter to FDOH regarding its verification visit and conclusions regarding the State's Part C program. All findings regarding the State's Part C program are included in that letter.